

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT MULLENS,

Defendant.

CASE NO. 05-80722-04

DISTRICT JUDGE PATRICK J. DUGGAN

MAGISTRATE JUDGE DONALD A. SCHEER

**ORDER**

Defendant Robert Mullens' Motion for Government Agents and Law Enforcement Officers to Retain Rough Notes was referred to the undersigned magistrate judge for hearing and determination. The motion was set for hearing on August 22, 2006. The parties, however, have waived oral argument and requested that the matter be determined on their written submissions.

Having reviewed Defendant's Motion, together with the Government's Response, I find that the routine destruction of rough notes after the preparation of formal reports does not violate the Jencks Act, Title 18 United States Code, Section 3500, or the holding in Brady v. Maryland, 373 U.S. 83 (1963). See, United States v. Frederick, 583 F.2d 273, cert. denied, 444 U.S. 860 (1978); United States v. Simtob, 901 F.2d 799, 809 (9<sup>th</sup> Cir. 1990). Such rough notes are not Jencks material and Defendant has no discovery right to such documents. United States v. Hinton, 719 F.2d 711, 719-722 (4<sup>th</sup> Cir. 1983), cert. denied, 104 S.Ct. 1300 (1981); United States v. Hurst, 510 F.2d 1035, 1036 (6<sup>th</sup> Cir. 1975). It is therefore ordered that Defendant's Motion for Government Agents and Law Enforcement Officers to Retain Rough Notes is denied. Provided, however, that the

Government shall honor the commitment expressed in its motion response to ensure that, to the extent that investigators rough notes still exist, the Government will counsel its agents to retain them pending trial.

s/Donald A. Scheer  
DONALD A. SCHEER  
UNITED STATES MAGISTRATE JUDGE

DATED: August 23, 2006

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**CERTIFICATE OF SERVICE**

I hereby certify on August 23, 2006 that I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to the following non-registered ECF participants on August 23, 2006. **None.**

s/Michael E. Lang  
Deputy Clerk to  
Magistrate Judge Donald A. Scheer  
(313) 234-5217